



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2020-0698; FRL-9215-01-R5]

**Air Plan Approval; Wisconsin; Serious Plan Elements for the
Wisconsin Portion of Chicago Nonattainment Area for the 2008
Ozone Standard**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP) to meet the volatile organic compound (VOC) and nitrogen oxides (NO_x) reasonably available control technology (RACT), clean-fuel vehicle programs (CFVP), and the enhanced monitoring of ozone and ozone precursors (EMP) requirements of the Clean Air Act (CAA) in the Wisconsin portion of the Chicago-Naperville, Illinois-Indiana-Wisconsin nonattainment area (Chicago area) for the 2008 ozone National Ambient Air Quality Standards (NAAQS or standards). EPA is proposing to approve this SIP revision pursuant to section 110 and part D of the requirements of the CAA and EPA's regulations, because it satisfies the above requirements for an area which is classified as serious nonattainment for the 2008 ozone NAAQS. Other serious elements will be addressed in a separate action.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2020-0698 at <https://www.regulations.gov>, or via email to blakley.pamela@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680,

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SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA. This supplementary information section is arranged as follows:

I. What Is the Background for This Action?

A. Background on the 2008 Ozone Standard.

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm) (73 FR 16436).

Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standard. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation. Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area’s “design value,” which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.

Areas that EPA designates nonattainment for the ozone NAAQS are subject to certain requirements, including the general nonattainment area planning requirements of CAA section 172 and the ozone-specific nonattainment planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory

air quality planning and control requirements than those in higher classifications. For marginal areas, CAA section 182(a) details that a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions statements from stationary sources in the area, and implement a nonattainment new source review (NSR) program for the relevant ozone NAAQS. For moderate areas, the SIP requirements are found in CAA section 182(b), a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit an Reasonable Further Progress (RFP) plan, the requirement to adopt and implement certain emissions controls, such as RACT and Inspection and Maintenance (I/M), and the requirement for greater emissions offsets for new or modified major stationary sources under the state's nonattainment NSR program. For serious nonattainment areas, the SIP requirements are found in CAA section 182(c) and include: an attainment demonstration, RACT for VOC and NO_x, Reasonably Available Control Measures, RFP reductions in VOC and/or NO_x emissions in the area, contingency measures to be implemented in the event of failure to attain the standard, enhanced I/M program, an EMP, a CFVP, a transportation control demonstration, and changes to permitting programs for serious areas.

B. Background on the Chicago 2008 Ozone Nonattainment Area.

On June 11, 2012 (77 FR 34221), EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and the eastern portion of Kenosha County in Wisconsin. On May 4, 2016 (81 FR 26697), pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago area failed to attain the 2008 ozone NAAQS by the July 20, 2015 marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. On August 23, 2019, EPA again reclassified the Chicago nonattainment area from moderate to serious nonattainment status, effective September 23, 2019 (84 FR 44238). This reclassification was based on 2015-2017 monitoring data.

II. EPA's Evaluation of Wisconsin's SIP Submission.

Wisconsin submitted a SIP revision on December 1, 2020, to address the serious nonattainment area requirements for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. The submission contained several nonattainment plan elements, including a VOC and NO_x RACT plan, the CFVP, and the EMP. The submission also included an attainment demonstration, RFP, RFP contingency measures, enhanced I/M, transportation conformity motor vehicle emissions budgets, and a transportation control demonstration which will be addressed in a separate action(s).

A. VOC RACT in the Wisconsin Portion of the Chicago Area for the 2008 Ozone NAAQS.

Sections 172(c)(1) and 182(b)(2) of the CAA require states to implement RACT in ozone nonattainment areas classified as moderate (and higher). Specifically, these areas are required to implement RACT for all major VOC emissions sources and for all sources covered by a Control Techniques Guideline (CTG). The major source threshold for serious nonattainment ozone areas is a potential to emit (PTE) 50 tons per year (TPY). A CTG is a document issued by EPA which establishes a "presumptive norm" for RACT for a specific VOC source category. States must submit rules, or negative declarations when no such sources exist for CTG source categories.

EPA's SIP Requirements Rule for the 2008 ozone NAAQS indicates that states may meet RACT through the establishment of new or more stringent requirements that meet RACT control levels, through a certification that previously adopted RACT controls in their SIPs approved by EPA for a prior ozone NAAQS also represent adequate RACT control levels for attainment of the 2008 ozone NAAQS, or with a combination of these two approaches. In addition, a state may submit a negative declaration in instances where there are no CTG sources.

Wisconsin previously addressed RACT requirements in the Kenosha portion of the nonattainment area when it developed attainment plans for the 1979 and 1997 ozone standards. Wisconsin has previously adopted RACT rules for VOC emission

sources in the nonattainment areas under Wisconsin Administrative Code NR 420. Wisconsin has evaluated the previously adopted regulations and determined that these rules still satisfy RACT for its current submittal. Wisconsin's December 1, 2020 submittal describes the VOC RACT program for the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS. Wisconsin has implemented a VOC RACT program for the Wisconsin portion 2008 ozone nonattainment area through: (1) Implementation of CTG-recommended control measures through state administrative rules and an administrative order, (2) Negative declarations certifying that no sources exist in the nonattainment area that are subject to the CTGs whose control measures have not been codified in state administrative rules or enforced through an administrative order, and (3) A negative declaration certifying that no non-CTG major source of VOCs exists in the nonattainment area.

The submittal provided a list of the CTGs for which RACT requirements have been codified in the Wisconsin Administrative Code. Wisconsin has not adopted VOC RACT regulations for four CTGs: shipbuilding and ship repair, aerospace manufacturing, fiberglass boat manufacturing, and the oil and natural gas industry. In addition, while Wisconsin has adopted rules to cover industrial adhesive use, metal and plastic parts coatings, and automobile and light-duty truck manufacturing, the Wisconsin Administrative Code does not reflect the most recently published CTGs for these categories. Wisconsin performed an applicability

analysis for these categories in the Wisconsin portion of the Chicago area. Wisconsin's analysis determined that there are no facilities for these CTGs in the Kenosha nonattainment area: shipbuilding and ship repair, aerospace manufacturing, fiberglass boat manufacturing, oil and natural gas industry, miscellaneous industrial adhesives, and automobile and light-duty truck assembly coatings. Wisconsin provided negative declarations for these CTG categories.

For the remaining CTG category, miscellaneous metal and plastic parts coatings, Wisconsin's analysis identified three facilities in the Kenosha County 2008 ozone nonattainment area. For two of the facilities, KKSP Precision Machining LLC (Facility Identification 230198760) and IEA, Inc. (Facility Identification 230167520), Wisconsin determined that the emissions were well below the CTG applicability threshold of 15 lb VOC per day, or equivalently, 3 TPY. The State found the remaining facility, Insinkerator (Facility Identification 230167630), to have CTG-applicable emissions of 3.1 TPY in 2017, which is above the CTG threshold. Insinkerator entered into an Administrative Order (AM-20-01) with Wisconsin that established permanent and enforceable emission limits, among other requirements, on this facility, which are consistent with the control requirements and limits set forth in the 2008 Miscellaneous Metal and Plastic Parts Coatings CTG. AM-20-01 was submitted to EPA for incorporation into the SIP on February 12, 2020. EPA approved these components of the VOC RACT program

as satisfying moderate area VOC RACT requirements on September 16, 2020 (85 FR 57729).

Wisconsin certified that the Wisconsin portion of the Chicago area's VOC RACT program also satisfies serious area VOC RACT requirements. The approved non-CTG major source negative declaration certifies that there are no sources within the Wisconsin portion of the Chicago area for the 2008 ozone NAAQS that produce non-CTG VOC emissions with a PTE of greater than 50 TPY, the serious nonattainment area major source threshold. Wisconsin has verified with recent emissions data that there continues to be no source within the Wisconsin portion of the Chicago area that meets the non-CTG major source threshold or the applicability criteria for CTGs not incorporated into the State's administrative code.

Therefore, EPA is proposing to find that Wisconsin submittal has met VOC RACT requirements for its portion of the Chicago area for the serious 2008 ozone NAAQS.

B. NO_x RACT in the Wisconsin Portion of the Chicago Area for the 2008 Ozone NAAQS.

Section 182(f) of the CAA requires RACT level controls for major stationary sources of NO_x located in moderate ozone (and higher) nonattainment areas. EPA approved Wisconsin's NO_x RACT program into the SIP on October 19, 2010 (44 FR 53762), for purposes of the 1997 ozone NAAQS. Wisconsin's NO_x RACT requirements are codified at NR 428.20 to 428.26 of the Wisconsin Administrative Code and were established to fulfill

the moderate nonattainment requirements for the 1997 ozone NAAQS and to apply to the facilities with a PTE of NO_x greater than 100 TPY. Wisconsin's RACT rules are applicable to major stationary sources of NO_x located in Wisconsin's moderate ozone nonattainment areas, including Kenosha County. With the reclassification from moderate to serious nonattainment for the 2008 ozone NAAQS, the major source threshold has decreased from 100 TPY to 50 TPY. Currently there are no facilities located in the Wisconsin portion of the Chicago area 2008 ozone nonattainment area with PTE of NO_x exceeding 50 TPY. Therefore, no additional facility in this area has become subject to NO_x RACT due to the reclassification of the area from moderate to serious nonattainment.

The 2008 ozone implementation rule provides that states can show that existing NO_x RACT programs fulfill requirements for the 2008 ozone NAAQS. In 2017, the Wisconsin Department of Natural Resources (WDNR) submitted the analysis of the current NO_x RACT program to demonstrate compliance with the implementation rule for the 2008 ozone NAAQS. The analysis showed that there is no incremental difference in control technologies between the existing NO_x RACT program and the updated assessment for the facilities operating in 2008. On February 13, 2019, EPA approved WDNR's NO_x RACT program for compliance with the 2008 ozone NAAQS for moderate nonattainment areas (84 FR 3701). Since the assessment was required for conditions in 2008 and is not dependent on the nonattainment classification level, an

updated NO_x RACT control technology assessment is not required for this SIP revision. Thus, based on equivalency in major source applicability and RACT control technology, the WDNR concludes that Wisconsin's current NO_x RACT program under state statute NR 428.20 to 428.26 fulfills RACT requirements for serious nonattainment for the 2008 ozone NAAQS. Therefore, EPA is proposing to find that Wisconsin has met the NO_x RACT for its portion of the Chicago area for the 2008 ozone NAAQS.

C. Clean Fuels Vehicles Program (CFVP).

CAA section 182(c)(4) requires states with ozone nonattainment areas classified as serious or higher to submit a SIP revision describing implementation of a CFVP, as described in CAA title II part C (40 CFR 88). EPA approved Wisconsin's CFVP on March 11, 1996 (61 FR 9641). EPA issued a memorandum on July 21, 2005, that found that then-current emission standards for vehicles (regulated under 40 CFR 86) were as or more stringent than the emission standards specified in 40 CFR 88 for the CFVP. Additionally, EPA issued a memorandum on April 17, 2006, noting that after the CFVP requirement became law, EPA promulgated new vehicle emission standards (e.g., Tier 2 Rule and heavy-duty engine standards) that are generally more stringent, or equivalent to, the CFV emission standards for light-duty vehicles, light-duty trucks, and heavy-duty vehicles and engines. The memorandum also stated that "[t]o meet the requirements of the Clean Fuel Fleet Program fleet managers can be assured that vehicles and engines certified to current Part

86 emission standards, which EPA has determined to be as or more stringent than corresponding CFV emission standards per the attached EPA Dear Manufacturer Letter meet the CFV emission standards and the CFFP requirements as defined in CFR part 88." We expected emission benefits of Tier 2 and heavy-duty engine standards over LEV standards. For example, Tier 2 NO_x standards have a benefit over LEV ranging from 0.09 grams/mile to 0.99 grams/mile on a per vehicle basis. With regard to the heavy-duty engine standards, there is a benefit of 1.4 grams/brake-horsepower per hour for the combination of non-methane hydrocarbons and NO_x on a per vehicle basis. Further reductions from these same vehicles will be achieved by EPA's newly promulgated Tier 3 emission standards.

Since vehicle emission standards have only become more stringent since the memo was issued in 2005, the CAA section 182(c)(4) CFVP requirement remains satisfied without the need for further action by the State.

D. Enhanced Monitoring Plan (EMP).

Section 182(c)(1) of the CAA requires states with nonattainment areas classified serious or higher to adopt and implement a program to improve air monitoring for ambient concentrations of ozone, NO_x and VOC. EPA initiated the Photochemical Assessment Monitoring Stations (PAMS) program in February 1993. The PAMS program required the establishment of an enhanced monitoring network in all ozone nonattainment areas classified as serious, severe, or extreme. On March 18, 1994

(59 FR 6021), EPA approved Wisconsin's SIP revision establishing an enhanced monitoring program.

Since that time, EPA concluded that requiring enhanced monitoring for ozone nonattainment areas classified as moderate or above is appropriate for the purposes of monitoring ambient air quality and better understanding ozone pollution. In EPA's revision to the ozone standard on October 1, 2015, EPA relied on the authority provided in sections 103(c), 110(a)(2)(B), 114(a) and 301(a)(1) of the CAA to expand the PAMS applicability to areas other than those that are serious or above ozone nonattainment and substantially to revise the PAMS requirements in 40 CFR part 58 appendix D (80 FR 65292). Specifically, this rule required states with moderate and above ozone nonattainment areas to develop and implement an EMP. These plans should detail enhanced ozone and ozone precursor monitoring activities to be performed to better understand area-specific ozone issues.

To meet this requirement, Wisconsin submitted its updated EMP as part of the 2018 Wisconsin Air Monitoring Network Plan, which EPA approved via a letter dated September 1, 2017. Wisconsin has submitted subsequent updates to its EMP with each year's network plan. Measures included in Wisconsin's current EMP include: monitoring of ozone and ozone precursors beyond federal requirements, ozone event triggered VOC samples for the PAMS suite of compounds, engaging and supporting external partners collecting ozone-related data, and analyzing monitoring data that had been previously collected. Wisconsin's EMP

specifically includes several enhanced monitoring efforts within the Wisconsin portion of the Chicago area.

Wisconsin will continue to meet its CAA section 182(c)(1) EMP requirements by including its EMP in Wisconsin's Air Monitoring Network Plan, which is subject to EPA review and approval on an annual basis. Therefore, EPA is proposing to find that Wisconsin has met the EMP requirements for its portion of the Chicago area for the 2008 ozone NAAQS.

III. What Action Is EPA Proposing?

EPA is proposing to approve revisions to Wisconsin's SIP pursuant to section 110 and part D of the CAA and EPA's regulations, because Wisconsin's December 1, 2020 nonattainment plan satisfies the requirements for the VOC and NO_x RACT, the CFVP, and the EMP, in the Wisconsin portion of the Chicago serious nonattainment area for the 2008 ozone NAAQS.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or

environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: December 1, 2021.

Debra Shore,
Regional Administrator, Region 5.

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